Remarks

The Office Action mailed March 29, 2005 and made final has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-22 are now pending in this application. Claims 1-22 stand rejected.

The rejection of Claims 1-22 under 35 U.S.C. § 103(a) as being unpatentable over McCauley et al. (U.S. Patent No. 6,067,533) ("McCauley") in view of Kosiba et al. (U.S. Patent No. 6,098,052) ("Kosiba") is respectfully traversed.

Applicant respectfully submits that no combination of McCauley and Kosiba describe or suggest the claimed invention. As discussed below, at least one of the differences between the cited references and the present invention is that neither McCauley nor Kosiba, alone or in combination, describe or suggest a method for modeling collections for non-stationary asset-based distressed loans in volatile markets wherein future monthly cash inflows are predicted, and wherein the method includes *incorporating management feedback into expectations of future performance wherein management feedback includes recommending a change in collection strategies used for prompting payment from each borrower associated with each loan included within the portfolio and predicting future payment performance of each borrower based on the recommended change in collection strategies*, and *updating the collections model* stored within the computer system *based on the payment comparisons and the management feedback*, wherein the updated collections model predicts future cash inflows for each loan included within the portfolio, and *the updated collections model is configured to apply a greater weight to the payment performance of each loan for the current month as compared to the payment performance of each loan for prior months*. (Emphasis added.)

McCauley describes a system for selecting a business plan for nonperforming real estate loans (see column 2, lines 64-67). A first step is for the system to obtain information on specific parameters of a loan and a borrower's financials including property information, personal information on the borrower, personal financial information of the borrower on a monthly basis, assets of the borrower, as well as number of unpaid loan payments (see column 7, lines 1-15). The system also generates a model for a loan modification option that includes a comparison

along a scale (110) (see column 7, lines 19-21). The scale is a scale of potential rates of return for a lender in connection with options for dealing with nonperforming loans, including "Default Rate", "Minimum Rate" and "Current Rate" (see column 4, lines 55-60). The "Default Rate" comes from a "Real Estate Owned" (REO) model that determines the lender's likely costs associated with a foreclosure based in part on the lender's past experience with similar foreclosures and in part on information on a property (see column 5, lines 1-5). The "Minimum Rate" accounts for a proposed sale prices of the property with a sale of the property to occur sooner than a sale in the foreclosure (see column 5, lines 37-39). The "Current Rate" is a rate of return corresponding to a current interest rate on new, non-distressed loans purchased by the lender (see column 5, lines 40-42). The system analyzes the generated loan models with predetermined rules of a loan experience database (see column 7, lines 22-24). After a user reviews the analyze sheet with loan model information, the system generates a business plan consistent with the lender's selection (see column 7, lines 33-35).

Kosiba describes a computerized collection strategy model for use in collecting payments from delinquent accounts. The computerized collection strategy model estimates for each possible collection strategy, how much will be paid on each account in response to that collection strategy, estimates the amount of resources to be expended in the execution of that collection strategy, and recommends a particular collection strategy for each account that optimizes the use of the available collection resources.

More specifically, the Kosiba collection model automatically groups consumers into a response category based upon a computed estimation of the consumer's response to a particular collection strategy. According to Kosiba, factors, such as the consumer's payment history, date of last payment, and delinquency history are stored within the computer system database and used to automatically characterize the consumer and group the consumer into a sub-group with other consumers that are predicted to have a similar response to the same collection strategy. Thus, the invention automatically identifies a collection strategy and a population of individual consumers and automatically defines at least one response category in terms of estimated consumer response to a collection strategy.

Claim 1 recites a method for modeling collections for non-stationary asset-based distressed loans in volatile markets wherein future monthly cash inflows are predicted using a computer system configured with a collections model and a re-marketing model, the non-stationary asset-based loans are included within a distressed loan portfolio, the method includes "categorizing each non-stationary asset-based loan included within the portfolio based on a prior month's payment of the corresponding loan, non-stationary asset-based loans include at least one of automobile loans, vehicle loans, and credit card loans...categorizing each loan included within the portfolio based on a contractual delinquency of the corresponding loan...utilizing the collections model to predict payments made by borrowers of each loan included within the portfolio, the collections model is based on historical payment information of the borrower, a plurality of collection strategies that may be utilized for collecting payment from the borrower, and the delinquency category assigned to the loan...comparing payments received during a current month for each loan to the delinquency category assigned to each corresponding loan and the predicted payments for each corresponding loan...comparing payments received for each loan during the current month to the prior month's payment category of the corresponding loan...incorporating management feedback into expectations of future performance wherein management feedback includes recommending a change in collection strategies used for prompting payment from each borrower associated with each loan included within the portfolio and predicting future payment performance of each borrower based on the recommended change in collection strategies...and updating the collections model stored within the computer system based on the payment comparisons and the management feedback, the updated collections model predicts future cash inflows for each loan included within the portfolio, the updated collections model is configured to apply a greater weight to the payment performance of each loan for the current month as compared to the payment performance of each loan for prior months."

Neither McCauley nor Kosiba, considered alone or in combination, describe or suggest a method for modeling collections for non-stationary asset-based distressed loans in volatile markets wherein future monthly cash inflows are predicted using a method that includes *incorporating management feedback into expectations of future performance wherein management feedback includes recommending a change in collection strategies used for prompting payment from each borrower associated with each loan included within the portfolio*

and predicting future payment performance of each borrower based on the recommended change in collection strategies. (Emphasis added.)

Moreover, neither McCauley nor Kosiba, considered alone or in combination, describe or suggest a method that includes *updating the collections model* stored within the computer system *based on the payment comparisons and the management feedback*, wherein the updated collections model predicts future cash inflows for each loan included within the portfolio, and *the updated collections model is configured to apply a greater weight to the payment performance of each loan for the current month as compared to the payment performance of each loan for prior months.* (Emphasis added.)

Rather, in contrast to the present invention, McCauley describes obtaining information on specific parameters of a loan and a borrower's financials, generating a model for a loan modification option, analyzing the generated loan models with predetermined rules of a loan experience database, and generating a business plan consistent with the lender's selection; and Kosiba describes a collection strategy model that automatically groups consumers into a response category based upon a computed estimation of the consumer's response to a particular collection strategy.

Applicant respectfully submits that McCauley is not directed to non-stationary asset-based loans. In fact, McCauley is directed to distressed residential real estate loans. Therefore, although McCauley discusses a lender's potential rates of return on a loan if the lender (i) chooses to foreclose on a piece of real property, (ii) chooses a short payoff for the piece of real property, or (iii) chooses to invest the same money at prevailing interest rates (col. 4, lines 40-52), McCauley does not describe nor teach modeling collections for non-stationary asset-based distressed loans in volatile markets wherein future monthly cash inflows are predicted. Moreover, McCauley does not describe or teach categorizing each non-stationary asset-based loan included within the portfolio based on a prior month's payment of the corresponding loan wherein the non-stationary asset-based loans include at least one of automobile loans, vehicle loans, and credit card loans. Applicant submits that calculating rates of returns relating to a piece of real property as describe in McCauley does not teach modeling collections for non-stationary

asset-based distressed loans in volatile markets wherein future monthly cash inflows are predicted.

In fact, even the Office Action acknowledges that "McCauley does not disclose non-stationary asset-based distressed loans or comparing payments received for each loan during the current month to the prior month's payment category."

Applicant also submits that McCauley does not describe or suggest utilizing a collections model to predict payments made by borrowers of each loan included within the portfolio wherein the collections model is based on historical payment information of the borrower, a plurality of collection strategies that may be utilized for collecting payment from the borrower, and the delinquency category assigned to the loan. In fact, it does not appear that McCauley even mentions collection strategies that may be utilized for collecting payment or delinquency categories assigned to loans.

Because McCauley is silent as to utilizing collection strategies for collecting payment, Applicant further submits that McCauley cannot describe or suggest incorporating management feedback into expectations of future performance *wherein management feedback includes recommending a change in collection strategies used for prompting payment from each borrower associated with each loan included within the portfolio and predicting future payment performance of each borrower based on the recommended change in collection strategies.* Rather, McCauley merely describes a system for selecting a business plan for nonperforming real estate loans that includes generating a model for a loan modification option that includes a comparison between potential rates of return for a lender in connection with options for dealing with the nonperforming loans, including a "Default Rate", "Minimum Rate" and "Current Rate". McCauley does not describe, teach or even mention changes in collection strategies and/or predicting performance based on the change in collection strategies.

Furthermore, McCauley does not describe or suggest updating a collections model based on the payment comparisons and the management feedback, wherein the updated collections model predicts future cash inflows for each loan included within the portfolio, and the updated collections model is configured to apply *a greater weight to the payment performance of each loan for the current month as compared to the payment performance of each loan for prior*

months. Notably, McCauley does not describe, teach or even mention updating a collections model based on management feedback, or a model that applies a greater weight to the payment performance for the current month as compared to the prior months.

With respect to Kosiba, the Office Action asserts that Kosiba teaches "a credit card collection strategy model and corresponding method comprising non-stationary asset-based distressed loans...and comparing payments received for each loan during the current month to a prior month's payment category..." Although Kosiba discusses a method for determining a collection strategy for collecting payments from a delinquent consumer for debts owed by the consumer based on a credit card debt, Kosiba, like McCauley, does not describe or suggest incorporating management feedback into expectations of future performance *wherein management feedback includes recommending a change in collection strategies used for prompting payment from each borrower associated with each loan included within the portfolio and predicting future payment performance of each borrower based on the recommended change in collection strategies*. Rather, Kosiba merely describes a collection strategy model that automatically groups consumers into a response category based upon a computed estimation of the consumer's response to a particular collection strategy. Kosiba does not describe, teach or even mention changes in collection strategies and/or predicting performance based on the change in collection strategies.

Furthermore, Kosiba does not describe or suggest updating a collections model based on the payment comparisons and the management feedback, wherein the updated collections model predicts future cash inflows for each loan included within the portfolio, and the updated collections model is configured to apply *a greater weight to the payment performance of each loan for the current month as compared to the payment performance of each loan for prior months*. Notably, Kosiba does not describe, teach or even mention updating a collections model based on management feedback, or a model that applies a greater weight to the payment performance for the current month as compared to the prior months.

Because neither McCauley nor Kosiba describes or suggests one or more of the claimed elements as discussed above, it follows that a combination of McCauley and Kosiba cannot teach

or suggest those elements. Accordingly, Applicant respectfully submits that Claim 1 is patentable over McCauley in view of Kosiba.

For at least the reasons set forth above, Applicant respectfully submits that Claim 1 is patentable over McCauley in view of Kosiba.

Claims 2-10 depend from independent Claim 1 which is submitted to be in condition for allowance. When the recitations of Claims 2-10 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 2-10 are also patentable over McCauley in view of Kosiba.

Claim 11 recites a computer-implemented system for modeling collections of collateral non-stationary asset-based distressed loans in volatile markets and predicting future monthly cash inflows, the system includes a computer having a collections model and a re-marketing model wherein the non-stationary asset-based loans are included within a distressed loan portfolio, and the computer is configured to "categorize each non-stationary asset-based loan included within the portfolio based on a prior month's payment of the corresponding loan, non-stationary asset-based loans include at least one of automobile loans, vehicle loans, and credit card loans...categorize each loan included within the portfolio based on a contractual delinquency of the corresponding loan...access the collections model to predict payments made by borrowers of each loan included within the portfolio, the collections model is based on historical payment information of the borrower, a plurality of collection strategies that may be utilized for collecting payment from the borrower, and the delinquency category assigned to the loan...compare payments received during a current month for each loan to the delinquency category assigned to each corresponding loan and the predicted payments for each corresponding loan...compare payments received for each loan during the current month to the prior month's payment category of the corresponding loan...incorporate management feedback into expectations of future performance wherein management feedback includes recommending a change in collection strategies used for prompting payment from each borrower associated with each loan included within the portfolio and predicting future payment performance of each borrower based on the recommended change in collection strategies...and update the collections model based on the payment comparisons and the management feedback, the updated collections

model predicts future cash inflows for each loan included within the portfolio, the updated collections model is configured to apply a greater weight to the payment performance of each loan for the current month as compared to the payment performance of each loan for prior months."

Claim 11 recites a system comprising, among other things, a computer configured to perform steps essentially similar to those recited in Claim 1. Thus, it is submitted that Claim 11 is patentable over the combination of McCauley in view of Kosiba for at least the reasons that correspond to those given with respect to Claim 1.

Claims 12-22 depend from independent Claim 11 which is submitted to be in condition for allowance. When the recitations of Claims 12-22 are considered in combination with the recitations of Claim 11, Applicant submits that dependent Claims 12-22 are also patentable over McCauley in view of Kosiba.

In addition, the rejection of Claims 1-22 under 35 U.S.C. § 103(a) as being unpatentable over McCauley in view of Kosiba is further traversed on the grounds that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither McCauley nor Kosiba, considered alone or in combination, describe or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicant respectfully submits that it would not be obvious to one skilled in the art to combine McCauley with Kosiba because there is no motivation to combine the references suggested in the art.. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicant's own teaching.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the
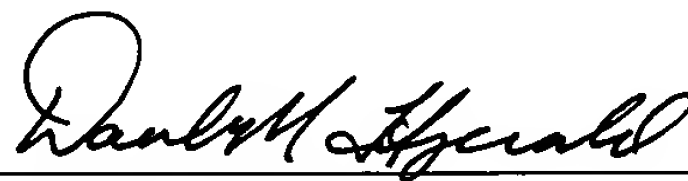
present case, neither a suggestion nor motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection appears to be based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant requests that the Section 103 rejection of Claims 1-22 be withdrawn.

For at least the reasons set for above, Applicant respectfully requests that the Section 103 rejection of Claims 1-22 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,

Daniel M. Fitzgerald
Registration No. 38,880
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070